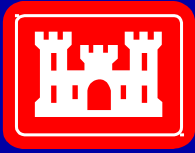


regulatory guidance materials related to Rapanos

- Guidebook
- Appendix A: Memorandum
- Appendix B: JD Form
- Appendix C: Coordination process
- Appendix D: Traditionally Navigable Waters
- Appendix E: RGL 07 – 01
- Appendix F: RGL 05 – 02
- Appendix G: RGL 06 – 01
- Appendix H: RGL 05 – 05
- Q&A's



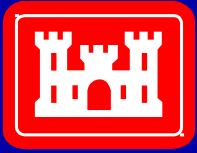
Definitions

- 1. Traditional Navigable Waters: Refer to Appendix D of the Instructional Guidebook, available at: http://www.usace.army.mil/cw/cecwo/reg/cwa_guide/cwa_guide.htm for Guidance on the determination of Traditionally Navigable Waters.**
- 2. Considerations include, but are not limited to, both public and private boating access points, historical records of commerce, public boating/rafting activities, “put ins/take outs”, fisheries related activities, forestry related activities (eg. log rafting)**



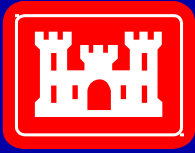
A word about tributaries.....

- According to the Instructional Guidebook, page 40, a tributary is a natural, man-altered, or man-made body that carries flow directly or indirectly into a Traditionally Navigable Water (TNW).
- The lateral limits of jurisdiction extend to the limits of the ordinary high water mark (OHWM) (33 CFR Part 328.4). See Regulatory Guidance Letter (RGL) 05-05 for definition and identification of OHWM.
- All drainage features (either natural, manipulated or man-made) that exhibit an OHWM may be considered tributaries and have the potential to be jurisdictional pursuant to Section 404 and 401 of the Clean Water Act (33 CFR 328.4). In many cases, these tributaries will be Relatively Permanent Waters (RPWs) and will be jurisdictional. However, if the tributary is a non-RPW and it cannot be demonstrated that it has a Significant Nexus (SN) to a Traditionally Navigable Water (TNW), the tributary will NOT be jurisdictional and thus not subject to Section 404 of the Clean Water Act.
- Maps for jurisdictional determinations should list regulated and non-regulated wetlands and regulated and non-regulated tributaries only. Resource quality or type (ditch vs. stream) discussions are appropriate at the time a permit request is made.



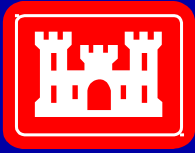
Review Area

- Review Area refers to the area under consideration and can be synonymous with project area. However, in those cases where the project area requires the completion of additional JD forms (e.g. Larger tracts of land), the review area will be confined to the area assessed on the JD form.



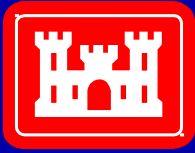
Relevant Reach

- See page 40 in the Instructional Guidebook. The relevant reach is the tributary (must have OHWM) from the point that it intercepts the review area upstream until the tributary loses stream order and downstream until the tributary gains stream order*. As mentioned below, a Relevant Reach may be quite long or short depending on its location.
 - *See http://en.wikipedia.org/wiki/Strahler_Stream_Order for assistance in determining stream order.
- Relevant Reaches may be very long or quite short depending on their landscape position. Use a USGS, soils map, etc. to help determine stream order.
- A Relevant Reach is a tributary (must have an OHWM) which in most cases will be considered an RPW (perennial and or seasonal flow) and will thus be jurisdictional by definition. Absent wetlands, a SN determination will only be done on a tributary if it is a non-RPW, but none the less contains an OHWM.



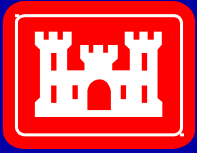
Relevant Reach con't

- If a SN evaluation is performed on adjacent wetlands and it is determined that there is a SN to a TNW, both the wetlands and the tributary that are used in the Relevant Reach become jurisdictional. It is therefore important to accurately define the Relevant Reach. A feature (ditch/non-RPW) that the regulator has determined, in the field, to not be jurisdictional (does not contain an OHWM) should not be used as a relevant reach.
- Although the Guidance indicates that the Significant Nexus evaluation will be conducted on all wetlands adjacent to the tributary, this analysis does not need to encompass all wetlands along the tributary if a positive SN determination can be made by only assessing those wetlands in the Review Area or in smaller areas up and downstream of the Review Area.



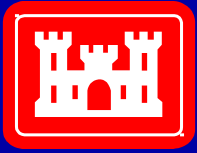
Abutting

- For the purposes of the SN evaluation, a wetland is abutting if it is connected to a tributary by a jurisdictional feature such as a contiguous/continuous wetland connection.
- Non-abutting is defined as being not contiguous/continuous.
- Roads and other man-made features do not sever jurisdiction, but they do sever continuity. Adjacent wetlands separated by dunes, berms, roads, dikes, and the like are considered to be non-abutting.



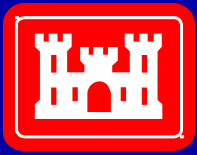
Adjacent

- Defined as bordering, neighboring or contiguous (33 CFR Part 328). Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."
- Wetlands can not be adjacent to another wetland. Wetlands must be adjacent to a jurisdictional feature (33 CFR 328.3 (1-6)) in order to establish jurisdiction.



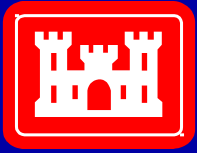
Similarly Situated

- All adjacent wetlands that are located along the relative reach should be considered in the SN evaluation (Guidebook p. 56). Although the JD form implies that wetlands that are “similarly situated” should be used in the assessment, the Guidebook (p. 56) is clear that “the evaluation will also consider the functions performed cumulatively by any and all wetlands adjacent to the tributary.”



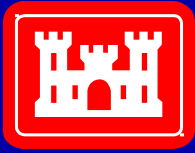
Significant Nexus Evaluation

- This evaluation requires that the physical, chemical, and biological functions performed by the wetlands and/or tributary have more than a speculative or insubstantial effect on the TNW. Accordingly, this analysis should concentrate on the functions that are performed by all wetlands adjacent to the tributary even though those functions may vary depending on the geomorphic location of the wetlands under consideration.
- It is not the intention to collect site specific data on each and every wetland that is adjacent to the tributary but to rely on the best information available to make this determination.

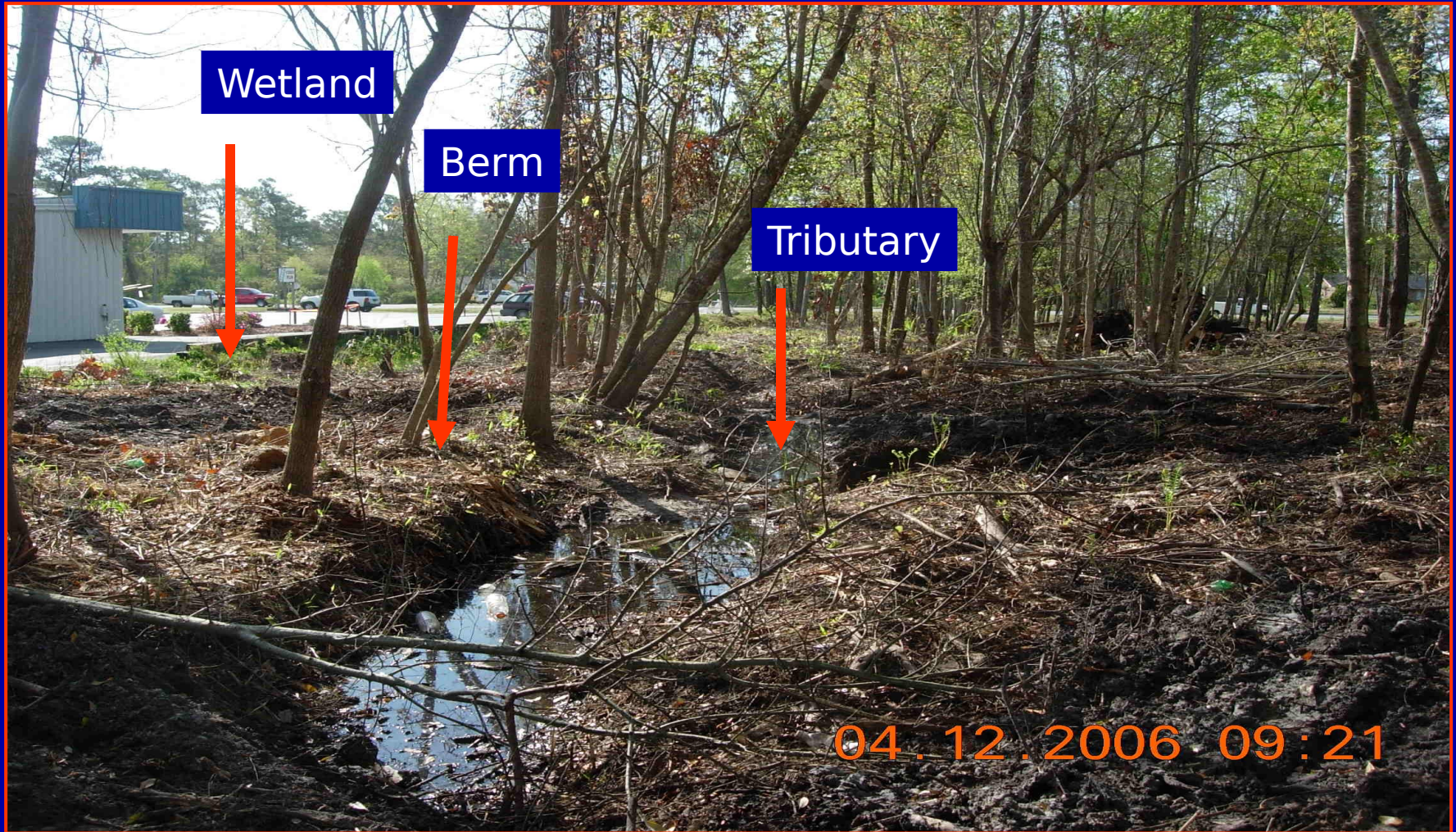


Definitions

1. Relatively Permanent Waters (RPWs): A tributary that is not a TNW that typically flows year round or has continuous flow at least seasonally (e.g. at least three months). Most streams that flow less than 3 months out of a (normal) year will not have an OHWM. If it is a tributary it is likely also to be an RPW.
2. Non-RPW: A tributary that is not a TNW or an RPW and flows continuously less than three months.



Adjacent but not abutting

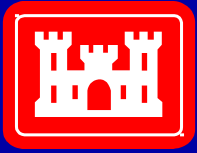




We will assert CWA

jurisdiction where (significant nexus determination not required) :

- A TNW is present
- Wetlands Adjacent (abutting and not abutting) to TNW's
- Non-Navigable tributaries of TNW's that are relatively permanent (RPW) where the tributaries flow year round or have continuous flow at least seasonally (3 months).
- Wetlands that directly abut such tributaries



A Significant Nexus determination is required where:

- Non-Navigable tributaries that are not relatively permanent (e.g. flow less than 3 months).
- Wetlands adjacent to non-navigable tributaries that are not relatively permanent.
- Wetlands adjacent to but that do not abut a relatively permanent non-navigable tributary.
 - **NOTE: Wetlands for which we cannot establish a significant nexus are not isolated, they are simply not jurisdictional under the CWA.